

ASSEMBLY BILL

No. 424

Introduced by Assembly Member Calderon

February 15, 2005

An act to amend Sections 530.6 and 530.8 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 424, as introduced, Calderon. Identity theft.

Existing law provides a procedure for a person to initiate an investigation of potential identity theft. Existing law also provides that any person, upon discovering that in the person's name an unauthorized individual has made an application for certain services or has opened certain accounts, is entitled to receive the identifying information that was used by the unauthorized individual to apply for any service or open any account, upon the presentation of a copy of a police report and identifying information.

This bill would provide that "person" as used in these provisions includes a firm, association, organization, partnership, business trust, company, corporation, limited liability company, or other public entity.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 530.6 of the Penal Code is amended to
- 2 read:
- 3 530.6. (a) A person who has learned or reasonably suspects
- 4 that his or her personal identifying information has been

1 unlawfully used by another, as described in subdivision (a) of
2 Section 530.5, may initiate a law enforcement investigation by
3 contacting the local law enforcement agency that has jurisdiction
4 over his or her actual residence, which shall take a police report
5 of the matter, provide the complainant with a copy of that report,
6 and begin an investigation of the facts. If the suspected crime
7 was committed in a different jurisdiction, the local law
8 enforcement agency may refer the matter to the law enforcement
9 agency where the suspected crime was committed for further
10 investigation of the facts.

11 (b) A person who reasonably believes that he or she is the
12 victim of identity theft may petition a court, or the court, on its
13 own motion or upon application of the prosecuting attorney, may
14 move, for an expedited judicial determination of his or her
15 factual innocence, where the perpetrator of the identity theft was
16 arrested for, cited for, or convicted of a crime under the victim's
17 identity, or where a criminal complaint has been filed against the
18 perpetrator in the victim's name, or where the victim's identity
19 has been mistakenly associated with a record of criminal
20 conviction. Any judicial determination of factual innocence made
21 pursuant to this section may be heard and determined upon
22 declarations, affidavits, police reports, or other material, relevant,
23 and reliable information submitted by the parties or ordered to be
24 part of the record by the court. Where the court determines that
25 the petition or motion is meritorious and that there is no
26 reasonable cause to believe that the victim committed the offense
27 for which the perpetrator of the identity theft was arrested, cited,
28 convicted, or subject to a criminal complaint in the victim's
29 name, or that the victim's identity has been mistakenly associated
30 with a record of criminal conviction, the court shall find the
31 victim factually innocent of that offense. If the victim is found
32 factually innocent, the court shall issue an order certifying this
33 determination.

34 (c) After a court has issued a determination of factual
35 innocence pursuant to this section, the court may order the name
36 and associated personal identifying information contained in
37 court records, files, and indexes accessible by the public deleted,
38 sealed, or labeled to show that the data is impersonated and does
39 not reflect the defendant's identity.

1 (d) A court that has issued a determination of factual
2 innocence pursuant to this section may at any time vacate that
3 determination if the petition, or any information submitted in
4 support of the petition, is found to contain any material
5 misrepresentation or fraud.

6 (e) The Judicial Council of California shall develop a form for
7 use in issuing an order pursuant to this section.

8 (f) *For purposes of this section "person" means a natural*
9 *person, firm, association, organization, partnership, business*
10 *trust, company, corporation, limited liability company, or public*
11 *entity.*

12 SEC. 2. Section 530.8 of the Penal Code is amended to read:

13 530.8. (a) If a person discovers that an application in his or
14 her name for a loan, credit line or account, credit card, charge
15 card, public utility service, mail receiving or forwarding service,
16 office or desk space rental service, or commercial mobile radio
17 service has been filed with any person or entity by an
18 unauthorized person, or that an account in his or her name has
19 been opened with a bank, trust company, savings association,
20 credit union, public utility, mail receiving or forwarding service,
21 office or desk space rental service, or commercial mobile radio
22 service provider by an unauthorized person, then, upon
23 presenting to the person or entity with which the application was
24 filed or the account was opened a copy of a police report
25 prepared pursuant to Section 530.6 and identifying information in
26 the categories of information that the unauthorized person used to
27 complete the application or to open the account, the person, or a
28 law enforcement officer specified by the person, shall be entitled
29 to receive information related to the application or account,
30 including a copy of the unauthorized person's application or
31 application information and a record of transactions or charges
32 associated with the application or account. Upon request by the
33 person in whose name the application was filed or in whose name
34 the account was opened, the person or entity with which the
35 application was filed shall inform him or her of the categories of
36 identifying information that the unauthorized person used to
37 complete the application or to open the account. The person or
38 entity with which the application was filed or the account was
39 opened shall provide copies of all paper records, records of
40 telephone applications or authorizations, or records of electronic

1 applications or authorizations required by this section, without
2 charge, within 10 business days of receipt of the person's request
3 and submission of the required copy of the police report and
4 identifying information.

5 (b) Any request made pursuant to subdivision (a) to a person
6 or entity subject to the provisions of Section 2891 of the Public
7 Utilities Code shall be in writing and the requesting person shall
8 be deemed to be the subscriber for purposes of that section.

9 (c) (1) Before a person or entity provides copies to a law
10 enforcement officer pursuant to subdivision (a), the person or
11 entity may require the requesting person to submit a signed and
12 dated statement by which the requesting person does all of the
13 following:

14 (A) Authorizes disclosure for a stated period.

15 (B) Specifies the name of the agency or department to which
16 the disclosure is authorized.

17 (C) Identifies the types of records that the requesting person
18 authorizes to be disclosed.

19 (2) The person or entity shall include in the statement to be
20 signed by the requesting person a notice that the requesting
21 person has the right at any time to revoke the authorization.

22 (d) (1) A failure to produce records pursuant to subdivision
23 (a) shall be addressed by the court in the jurisdiction in which the
24 victim resides or in which the request for information was issued.
25 At the victim's request, the Attorney General, the district
26 attorney, or the prosecuting city attorney may file a petition to
27 compel the attendance of the person or entity in possession of the
28 records, as described in subdivision (a), and order the production
29 of the requested records to the court. The petition shall contain a
30 declaration from the victim stating when the request for
31 information was made, that the information requested was not
32 provided, and what response, if any, was made by the person or
33 entity. The petition shall also contain copies of the police report
34 prepared pursuant to Section 530.6 and the request for
35 information made pursuant to this section upon the person or
36 entity in possession of the records, as described in subdivision
37 (a), and these two documents shall be kept confidential by the
38 court. The petition and copies of the police report and the
39 application shall be served upon the person or entity in
40 possession of the records, as described in subdivision (a). The

1 court shall hold a hearing on the petition no later than 10 court
2 days after the petition is served and filed. The court shall order
3 the release of records to the victim as required pursuant to this
4 section.

5 (2) In addition to any other civil remedy available, the victim
6 may bring a civil action against the entity for damages, injunctive
7 relief or other equitable relief, and a penalty of one hundred
8 dollars (\$100) per day of noncompliance, plus reasonable
9 attorneys' fees.

10 (e) For the purposes of this section, the following terms have
11 the following meanings:

12 (1) "Application" means a new application for credit or
13 service, the addition of authorized users to an existing account,
14 the renewal of an existing account, or any other changes made to
15 an existing account.

16 (2) "Commercial mobile radio service" means "commercial
17 mobile radio service" as defined in section 20.3 of Title 47 of the
18 Code of Federal Regulations.

19 (3) "Law enforcement officer" means a peace officer as
20 defined by Section 830.1.

21 (4) "*Person*" means a natural person, firm, association,
22 organization, partnership, business trust, company, corporation,
23 limited liability company, or public entity.